

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Global Brokerage, Inc. f/k/a FXCM Inc.
Securities Litigation

Master File No. 17-CV-00916-RA-BCM

This Document Relates To: All Actions

CLASS ACTION

REDACTED PLAINTIFFS' RULE 56.1 STATEMENT OF ADDITIONAL MATERIAL FACTS

Pursuant to Local Rule 56.1, Lead Plaintiff 683 Capital Partners, LP (“683 Capital”) and Class Representatives Shipco Transport Inc. and E-Global Trade and Finance Group, Inc. (collectively, “Plaintiffs”) submit this statement of additional material facts as to which Plaintiffs contend that there exists a genuine issue to be tried. Documents referenced in this statement are attached to the accompanying Declaration of Joshua Baker and referred to as “Ex. __.”

Company Background and Alleged False and Misleading Statements

148. [REDACTED]

Ex. 80 (Ahdout Tr. 27:22-28:2); Ex. 81 (Niv Tr. 22:19-20).

149. FXCM’s annual reports (“10-K”) for 2011, 2012, and 2013 stated in substantially similar, if not identical, form:

We primarily offer our customers what is referred to as an agency model to execute their trades. Our agency model is fundamental to our core business philosophy because we believe that it aligns our interests with those of our customers and reduces our risks. In the agency model, when our customer executes a trade on the best price quotation offered by our FX market makers, we act as a credit intermediary, or riskless principal, simultaneously entering into offsetting trades with both the customer and the FX market maker. We earn trading fees and commissions by adding a markup to the price provided by the FX market makers and generate our trading revenues based on the volume of transactions and the spread earned on transactions.

ECF No. 252-1 (2011 10-K); ECF No. 252-7 (2012 10-K); ECF No. 252-8 (2013 10-K).

150. FXCM's quarterly report ("10-Q") for the second quarter of 2012 ("12Q2") and its 2013 10-K stated:

[A]s we have for a number of years conducted our retail operations on the basis of the agency model, we could suffer reputational damage and additional regulatory scrutiny by offering execution to retail clients that creates an inherent conflict between the interests of the customer and our interests.

Ex. 83 (12Q2 10-Q); ECF No. 252-8 (2013 10-K).

151. FXCM's 2012 10-K stated: "Our commitment to the agency model is one example of our core business philosophy to reduce risks." ECF No. 252-7 (2012 10-K).

152. FXCM's 13Q1 10-Q, 13Q2 10-Q, 13Q3 10-Q, 14Q1 10-Q, 14Q2 10-Q, and 14Q3 10-Q stated: "As we predominantly operate our retail business on an agency model with the exception of certain trades of our CFD customers we are not exposed to the market risk of a position moving up or down in value." Ex. 85 (13Q1 10-Q). Ex. 86 (13Q2 10-Q). Ex. 87 (13Q3 10-Q); Ex. 88 (14Q1 10-Q); Ex. 89 (14Q2 10-Q); Ex. 90 (14Q3 10-Q).

153. On January 27, 2013, FXCM's website stated: "FXCM does not take a market position-eliminating a major conflict of interest." ECF No. 252-13. [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 59:12-15) [REDACTED]

[REDACTED]

154. On February 5, 2013, FXCM's website stated: "FXCM can see your waiting orders when you trade with No Dealing Desk execution. But this does not create a conflict of interest between you and FXCM because we aren't taking a market position." Ex. 91 (website printout). [REDACTED] Ex. 81 (Niv Tr. 61:24-62-18).

155. FXCM's 2011 10-K, 12Q1 10-Q, 12Q2 10-Q, 12Q3 10-Q, 2012 10-K, 13Q1 10-Q, 13Q2 10-Q, 13Q3 10-Q, 2013 10-K, 14Q1 10-Q, 14Q2 10-Q, 14Q3 10-Q and 2014 10-K stated in substantially similar, if not identical, form: "Retail trading revenue is our largest source of revenue and is primarily driven by: . . . (iv) the amount of additional retail revenues earned, including . . . payments we receive for order flow from FX market makers." ECF No. 252-1 (2011 10-K); Ex. 82 (12Q1 10-Q); Ex. 83 (12Q2 10-Q); Ex. 84 (12Q3 10-Q); ECF No. 252-7 (2012 10-K); Ex. 85 (13Q1 10-Q); Ex. 86 (13Q2 10-Q); Ex. 87 (13Q3 10-Q); ECF No. 252-8 (2013 10-K); Ex. 88 (14Q3 10-Q); Ex. 89 (14Q3 10-Q); Ex. 90 (14Q3 10-Q); ECF No. 252-9 (2014 10-K). Niv signed each of the 10-Qs and 10-Ks, and Ahdout signed each of the 10-Ks. *Id.*

156. FXCM's 12Q1 10-Q, 12Q2 10-Q, 12Q3 10-Q, 2012 10-K, 2013 10-K, and 2014 10-K stated in substantially similar, if not identical, form: "Income earned on order flow represents payments received from certain FX market makers in exchange for routing trade orders to these firms for execution. The Company's order routing software ensures that payments for order flow do not affect the routing of orders in a manner that is detrimental to its retail customers." Ex. 82 (12Q1 10-Q); Ex. 83 (12Q2 10-Q); Ex. 84 (12Q3 10-Q); ECF No. 252-7 (2012 10-K); ECF No. 252-8 (2013 10-K); ECF No. 252-9 (2014 10-K).

157. FXCM's 2011 10-K, 12Q2 10-Q and 12Q3 10-Q stated in substantially similar, if not identical, form: "We earn trading fees and commissions by adding a markup to the price provided by the FX market makers and generate our trading revenues based on the volume of transactions, not trading profits or losses." ECF No. 252-1 (2011 10-K); Ex. 83 (12Q2 10-Q); Ex. 84 (12Q3 10-Q).

158. FXCM's 14Q3 10-Q and 2014 10-K: The Company "no longer receive[d] payments for order flow." Ex. 90 (14Q3 10-Q); ECF No. 252-9 (2014 10-K).

159. FXCM disclosed other related party transactions in each of its annual and quarterly reports during time Effex paid FXCM, and included assessments of VIEs in its annual and quarterly reports through the first quarter of 2013. ECF No. 252-1 (2011 10-K); ECF No. 252-7 (2012 10-K); ECF No. 252-8 (2013 10-K); ECF No. 252-9 (2014 10-K); Ex. 82 (12Q1 10-Q); Ex. 83 (12Q2 10-Q); Ex. 84 (12Q3 10-Q); Ex. 85 (13Q1 10-Q); Ex. 86 (13Q2 10-Q); Ex. 87 (13Q3 10-Q); Ex. 88 (14Q1 10-Q); Ex. 89 (14Q2 10-Q); Ex. 90 (14Q3 10-Q).

160. FXCM's 2010 10-K included the following statements:

We utilize what is referred to as agency execution or an agency model. When our customer executes a trade on the best price quotation offered by our FX market makers, we act as a credit intermediary, or riskless principal, simultaneously entering into offsetting trades with both the customer and the FX market maker. We earn trading fees and commissions by adding a markup to the price provided by the FX market makers and generate our trading revenues based on the volume of transactions, not trading profits or losses. In addition to trading fees and commissions, we also earn other forms of revenue such as fees earned from: arrangements with other financial institutions to provide platform, back office and trade execution services, trading in contracts-for-difference, or CFDs, trading in equities and equity options, payments for order flow, FX market prices and other various ancillary FX related services and joint ventures.

Our agency model is fundamental to our core business philosophy because we believe that it aligns our interests with those of our customers, reduces our risks and provides distinct advantages over the principal model used by the majority of retail FX brokers. In the principal model, the retail FX broker sets the price it presents to the customer and may maintain its trading position if it believes the price may move in its favor and against the customer. We believe this creates an inherent conflict between the interests of the customer and those of the principal model broker. Principal model brokers' revenues typically consist primarily of trading gains or losses and are more affected by market volatility than those of brokers utilizing the agency model.

* * *

Retail trading revenue is our largest source of revenue and is primarily driven by: ... (iv) the amount of additional retail

revenues earned, including ... payments we receive for order flow from FX market makers.

* * *

Income earned on order flow represents payments received from certain FX market makers in exchange for routing trade orders to these firms for execution.

ECF No. 252-17 (2010 10-K).

Dittami Joins FXCM

161.

ECF No. 252-19 (Dittami employment contract).

Ex. 81 (Niv Tr. 72:2-18).

162.

Ex. 81 (Niv Tr. 64:2-65:2).

Ex. 81 (Niv Tr. 68:21-69:25); Ex. 92 (Dittami Tr. 30:10-16).

163.

Ex. 81 (Niv Tr. 66:2-17).

164.

Ex. 93 (GLBR_00121206, at

GLBR_00121207)

Ex. 94 (GLBR_00060316, at GLBR_00060317)

165. [REDACTED]

[REDACTED] Ex. 95 (Niv CFTC Tr. 77:16-78:8) [REDACTED]

[REDACTED] ECF No. 252-66 (Ernst & Young LLP (“E&Y”) memorandum stating that

166. [REDACTED]

[REDACTED] Ex. 95 (Niv CFTC Tr. 183:11-

184:8).

167. [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 87:20-88:10) [REDACTED]

Ex. 96 (Dittami CFTC Tr. 108:21-109:6).

168. [REDACTED]

[REDACTED] Ex. 97 (E Capital-000096 at E Capital-000097); Ex. 92 (Dittami Tr. 42:13-19).

169.

[REDACTED] Ex. 98 (GLBR_00153994); Ex. 92 (Dittami Tr. 56:15-57:9)
[REDACTED] Ex. 95 (Niv CFTC Tr. 68:9-12); Ex. 99 (Ahdout
CFTC Tr. 78:2-19). [REDACTED]
[REDACTED]
[REDACTED] Ex. 100 (GLBR_00046387); Ex. 95 (Niv CFTC Tr. 88:9-
13).

170.

[REDACTED]
[REDACTED]
[REDACTED] Ex. 95 (Niv CFTC Tr. 105:15-106:23).

FXCM Helps Form and Incubate Effex

171. [REDACTED] Ex. 97 (E Capital-000096 at E Capital-
000097). [REDACTED]
[REDACTED] Ex. 101 (GLBR_00218039); Ex. 92 (Dittami Tr. 43:11-16).

172.

[REDACTED]
[REDACTED]
[REDACTED] Ex. 102 (GLBR_00188104) [REDACTED]
[REDACTED] Ex. 103
(GLBR_00184106) [REDACTED] Ex.
104 (GLBR_00005808 at GLBR_00005808) [REDACTED]
[REDACTED]

173. [REDACTED]

[REDACTED] Ex. 95 (Niv CFTC Tr. 199:10-20, 204:13-9). [REDACTED] Ex. 92 (Dittami Tr. 76:12-77:2).

174. [REDACTED]

[REDACTED] Ex. 105 (E Capital-000107 at E Capital-000108); Ex. 80 (Ahdout Tr. 96:23-97:15); Ex. 81 (Niv Tr. 120:15-122:4).

175. [REDACTED]

[REDACTED] ECF No. 252-29 (note); ECF No. 252-30 (guaranty). [REDACTED]

[REDACTED] ECF No. 240-3 (Barron Rebuttal) at 20-23.

176. [REDACTED]

[REDACTED] Ex. 95 (Niv CFTC Tr. 177:12-178:8); ECF No. 252-37 (option agreement)

177. [REDACTED]

[REDACTED]. 105 (E Capital-000107 at E Capital-000107).

The Financial Relationship Between FXCM and Effex

178. [REDACTED]

[REDACTED]

[REDACTED] ECF No. 252-19 (Dittami employment contract).

179. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 37:9-15);

Ex. 81 (Niv Tr. 77:5-10).

180. [REDACTED]

[REDACTED] ECF No. 252-19

(Dittami employment contract). [REDACTED]

[REDACTED] . 105 (E Capital-000107 at E Capital-000107).

181. [REDACTED]

[REDACTED] Ex. 106 (GLBR_00189079); Ex. 81 (Niv Tr.

138:2-24) [REDACTED] Ex. 92 (Dittami

Tr. 99:9-16).

182. [REDACTED]

[REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 132:6-20) [REDACTED]

[REDACTED]

[REDACTED]

183. [REDACTED]

[REDACTED]

[REDACTED] Ex. 107 (E Capital-000049). [REDACTED]

[REDACTED] Ex.
96 (Dittami CFTC Tr. 136:11-137:7, 138:6-15). [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 108:12-108:24).

184. [REDACTED]

[REDACTED] ECF No. 252-37 (option agreement). [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 118:11-25).

185. [REDACTED]

[REDACTED] Ex. 108 (GLBR_00007733) [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 145:8-24) [REDACTED]

186. [REDACTED]

[REDACTED] ECF No. 252-33 ([REDACTED]

[REDACTED]); Ex. 109
(GLBR_00218789 at GLBR_00218789) [REDACTED]

[REDACTED] Ex. 110 (GLBR_00041735, ConvID: 11/15/2010 1:45, lines 18383-18439)

187. [REDACTED]

[REDACTED] Ex.

111 (GLBR_00152760 at GLBR_00152760). [REDACTED]

[REDACTED] Ex. 111 (GLBR_00152760 at GLBR_00152762).

188. [REDACTED]

[REDACTED] Ex. 112 (GLBR_00152765); Ex. 113 (GLBR_00152767 at GLBR_00152767).

189. [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 432:15-434:20).

190. [REDACTED]

[REDACTED] *See, e.g.*, Ex. 114 (GLBR_00189082); Ex. 115 (GLBR_00003915); Ex. 116 (GLBR_00003957); Ex. 117 (GLBR_00036290); Ex. 118 (GLBR_00008068); Ex. 119 (GLBR_00004262); Ex. 120 (GLBR_00004527). [REDACTED]

[REDACTED] Ex. 95 (Niv CFTC Tr. 346:19-23).

191. [REDACTED]

[REDACTED] Ex. 110 (GLBR_00041735, ConvID: 7/22/2010 17:12, at lines 602-630) [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 153:5-9) [REDACTED]

FXCM and Effex Attempted to Disguise Their Profit Sharing as Payments for Order Flow

192. [REDACTED]

[REDACTED] Ex. 114 (GLBR_00189082). [REDACTED]

[REDACTED] *See id.*

193. [REDACTED]

[REDACTED]. Ex. 109 (GLBR_00218789 at GLBR_00218789).

194. [REDACTED]

[REDACTED]. Ex. 95 (Niv CFTC Tr. 131:7-22).
Ex. 121 (GLBR_00036220 at GLBR_00036222) [REDACTED]

[REDACTED] Ex. 80 (Ahdout Tr. 200:2-7) [REDACTED]
[REDACTED]; Ex. 95 (Niv
CFTC Tr. 150:15-25, 153:9-13) [REDACTED]

195. [REDACTED]

[REDACTED] *E.g.*, Ex. 122
(GLBR_00184107 at GLBR_00184108); ECF No. 252-42 (November 2010 invoice); Ex. 123
(GLBR_00185174 at GLBR_00185175).

196. [REDACTED]

[REDACTED] Ex. 124 (GLBR_00152107 at GLBR_00152110-14) [REDACTED]

197. [REDACTED]

Ex. 81 (Niv Tr. 108:25-109:24).

198. FXCM filed its initial registration statement for its initial public offering on in early September 2010. Ex. 81 (Niv Tr. 42:8-13); Ex. 125 (excerpts from Form S-1 registration statement filed with the SEC).

199. [REDACTED]

Ex. 126 (GLBR_00194774) [REDACTED]

Ex. 127 (GLBR_00194756) [REDACTED]

[REDACTED] ECF No. 252-34 (March 1 Services Agreement); ECF No. 252-41 (May 1 Services Agreement).

200. [REDACTED]

[REDACTED] ECF No. 252-34 (March 1 Services

Agreement); Ex. 97 (E Capital-000096 at E Capital-000097); Ex. 107 (E Capital-000049). [REDACTED]

[REDACTED]

[REDACTED] See Ex. 126 (GLBR_00194774) [REDACTED]

[REDACTED]

[REDACTED]

201.

[REDACTED]

[REDACTED]. ECF No. 252-34

(March 1 Services Agreement); ECF No. 252-41 (May 1 Services Agreement); Ex. 126

(GLBR_00194774). [REDACTED]. Ex. 81 (Niv Tr. 112:15-4,

128:12-129:4).

202.

[REDACTED]

[REDACTED]. ECF No. 252-41 (May 1 Services Agreement); Ex.

81 (Niv Tr. 29:25-30:3).

203.

[REDACTED]

[REDACTED] Ex. 128 (Rosenfeld Tr. 130:11-21). [REDACTED]

[REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 134:21-13); Ex. 129 (EY-GBI-WP-00003862 at EY-GBI-

WP-00003868) [REDACTED]

[REDACTED].

204.

[REDACTED]

[REDACTED]. Ex. 126

(GLBR_00194774) [REDACTED]

Effex was the Only Retail Liquidity Provider Who Paid FXCM for Order Flow Between 2010-2014

205.

Ex. 81 (Niv Tr. 188:22-189:13).

Ex. 130 (GLBR_00022930 at GLBR_00022930); Ex. 81 (Niv Tr.

189:17-25); Ex. 95 (Niv CFTC Tr. 142:14-145:6).

206.

Ex. 131

(GLBR_00110416 at GLBR_00110416)

Id.

(GLBR_00110416 at GLBR_00110420)

207.

ECF No. 252-57.

208.

ECF No. 252-54.

209.

Ex. 81 (Niv Tr. 99:12-13).

210. [REDACTED]

[REDACTED] See Ex. 81 (Niv Tr. 159:8-162:6).

The Rate of Effex's Payments Varied With Effex's Profitability and Did Not Always Match the Services Agreements

211. [REDACTED]

[REDACTED] Ex. 96 (Dittami

CFTC Tr. 133:6-133:19, 142:5-20) [REDACTED]

212. [REDACTED]

[REDACTED]. Ex.

95 (Niv CFTC Tr. 132:2-9).

213. [REDACTED]

[REDACTED]. Ex. 132 (GLBR_00189088 at

GLBR_00189089) [REDACTED]

[REDACTED] Ex. 133 (GLBR_00218184 at

GLBR_00218185) [REDACTED]

214. [REDACTED]

[REDACTED] Ex.

134 (GLBR_00054454 at GLBR_00054454) [REDACTED]

[REDACTED] *See also* ECF No. 252-33; Ex. 108 (GLBR_00007733).

215. [REDACTED]

[REDACTED] *E.g.*, Ex. 121 (GLBR_00036220 at GLBR_00036222) [REDACTED]

[REDACTED] Ex. 135 (GLBR_00188143) [REDACTED]

[REDACTED]; Ex. 136 (GLBR_00188166 at GLBR_00188166) [REDACTED]

[REDACTED] Ex. 137

(GLBR_00184132 at GLBR_00184132) ([REDACTED])

[REDACTED] Ex. 138 (GLBR_00184136 at GLBR_00184136)

[REDACTED] Ex. 139 (GLBR_00118420 at GLBR_00118420) [REDACTED]

[REDACTED] Ex. 140 (GLBR_00119217 at GLBR_00119217-18) [REDACTED]

[REDACTED]

[REDACTED]. *See id.*

216. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 207:12-23, 214:19-24) [REDACTED]

[REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 154:5-10).

217. [REDACTED]

[REDACTED] Ex. 135 (GLBR_00188143) [REDACTED]

[REDACTED] Ex. 110 (GLBR_00041735, ConvID: 7/22/2010 17:12, lines 602-630) [REDACTED]

[REDACTED]

218. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 141 (GLBR_00194784 at GLBR_00194784) [REDACTED]

[REDACTED]

[REDACTED] Ex.

128 (Rosenfeld Tr. 148:10-149:17).

219. [REDACTED]

[REDACTED] ECF No. 252-43 (email from FXCM accountant to E&Y attaching chart showing payments from Effex in 2010); Ex. 128 (Rosenfeld Tr. 193:9-194:17, 222:6-223:3).

220.

[REDACTED] Ex. 136

(GLBR_00188166 at GLBR_00188166)

[REDACTED] Ex. 122 (GLBR_00184107 at GLBR_00184108); ECF No. 252-42 (November 2010 invoice).

221.

[REDACTED], ECF No. 252-41 (May 1 Services Agreement), [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 225:7-11) [REDACTED]

[REDACTED] ECF No. 252-43 (email from FXCM accountant to E&Y attaching chart showing payments from Effex in 2010); Ex. 128 (Rosenfeld Tr. 194:18-25, 223:4-15).

222.

[REDACTED] Ex. 116 (GLBR_00003957) [REDACTED]

[REDACTED] Ex. 96

(Dittami CFTC Tr. 164:22-166:4).

223.

[REDACTED], Ex. 142 (GLBR_00189249) ([REDACTED])

[REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 141:22-142:12, 151:6-22)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

224. [REDACTED] ECF
No. 252-46 (Amendment to Services Agreement). [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

225. [REDACTED] Ex. 92 (Dittami Tr. 244:8)
("We did over many years many streams with FXCM"). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex.
143 (GLBR_00003094 at GLBR_00003096) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 142 (GLBR_00189249) ([REDACTED])

[REDACTED] Ex. 144

(GLBR_00118665 at GLBR_00118665) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 145 (GLBR_00119021 at GLBR_00119021-22) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 140

(GLBR_00119217 at GLBR_00119217-18) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

226.

[REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 258:10-23). [REDACTED]

[REDACTED]

[REDACTED] g., Ex. 146 (GLBR_00119092 at GLBR_00119092 and GLBR_00119096) [REDACTED]

[REDACTED]

227.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Ex. 120 (GLBR_00004527 at GLBR_00004528).

228. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 275:23-276:9). [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 275:18-276:23).

229. [REDACTED]

[REDACTED]

[REDACTED] Ex. 123 (GLBR_00185174 at GLBR_00185175).

230. [REDACTED]

[REDACTED]

[REDACTED] See Ex. 123 (GLBR_00185174 at GLBR_00185175) (February 2013 invoice); Ex. 147 (GLBR_00185248) (March 2013 invoice); Ex. 148 (GLBR_00120028) (April 2013 invoice); Ex. 149 (GLBR_00217444) (May 2013 invoice); Ex. 150 (GLBR_00120227) (June 2013 invoice); Ex. 151 (GLBR_00185335) (July 2013 invoice); Ex. 152 (GLBR_00120656) (August 2013 invoice); Ex. 153 (GLBR_00185361) (October 2013 invoice); Ex. 154 (GLBR_00185363) (November 2013 invoice); Ex. 155 (GLBR_00185365) (December 2013 invoice); Ex. 156 (GLBR_00121084) (January 2014 invoice); Ex. 157 (GLBR_00121085) (February 2014 invoice); Ex. 158 (GLBR_00121083) (March 2014 invoice); Ex. 159 (GLBR_00154607) (April 2014 invoice); Ex. 160 (GLBR_00154608) (May 2014 invoice); Ex. 161 (GLBR_00154609) (June 2014 invoice); Ex. 162 (GLBR_00120896) (July 2014 invoice).

231. [REDACTED]

[REDACTED] Ex. 150 (GLBR_00120227); Ex. 92 (Dittami Tr. 278:23-279:7); ECF No. 252-61.

232. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 279:8-19).

233. [REDACTED]

[REDACTED] See Exs. 162-74 (invoices for June 2013

through July 2014).

234. [REDACTED]

[REDACTED] See Exs. 129 and 159-74

(invoices for February 2013 through July 2014).

Effex Depended on FXCM, Which Gave Effex Advantages to Win Trading Volume

235. [REDACTED] See

Ex. 96 (Dittami CFTC Tr. 230:18-21). [REDACTED]

[REDACTED] Ex. 92

(Dittami Tr. 335:4-24).

236. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 172:20-173:15, 335:4-12) ([REDACTED])

[REDACTED]; Ex. 119 (GLBR_00004262) [REDACTED]

237. [REDACTED]

[REDACTED] Ex. 92 (Dittami Tr. 335:18-24). [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 35:14-19).

238. [REDACTED]

[REDACTED]. Ex. 163 (GLBR_00103994) [REDACTED]

239. [REDACTED]

[REDACTED]. Ex. 96 (Dittami CFTC Tr. 39:16-24). [REDACTED]

[REDACTED] *Id.*; Ex. 110

(GLBR_00041735, ConvID: 11/15/2010 1:45, Excel lines 18383-18439) [REDACTED]

240. [REDACTED]

[REDACTED]. Ex. 96 (Dittami CFTC Tr.

41:8-14).

241.

242.

243.

Ex. 164 (GLBR_00046543) (email sent from “John Dittami <jdittami@fxcm.com>” on July 8, 2010).

244.

CFTC Tr. 188:13-203:17).

Ex. 96 (Dittami CFTC Tr. 207:3-16).

245.

Ex. 96 (Dittami CFTC Tr. 200:10-19).

Ex. 96

(Dittami CFTC Tr. 201:14-17); Ex. 165 (GLBR_00028063)

246.

Ex. 96 (Dittami CFTC Tr.

216:4-16) Ex. 166

(Kochel CFTC Tr. 97:18-17)

Ex. 167 (Meyer Tr. 201:13-202:5)

247.

Ex. 96 (Dittami CFTC Tr. 232:9-235:18).

248.

Ex. 168 (GLBR_00185250)

Ex. 167 (Meyer Tr. 207:6-22)

249.

Ex. 96 (Dittami CFTC Tr. 281:18-283:22).

250.

Ex. 96

(Dittami CFTC Tr. 327:13-19, 331:12-15).

251.

Ex. 81 (Niv Tr. 94:11-95:22).

Ex. 96 (Dittami CFTC Tr. 331:12-15).

252.

[REDACTED] Ex.

118 (GLBR_00008068); Ex. 92 (Dittami Tr. 324:22-326:8).

[REDACTED] Ex.

118 (GLBR_00008068 at GLBR_00008069).

[REDACTED] ECF No. 250 ¶ 95.

253.

[REDACTED] Ex. 96 (Dittami CFTC Tr. 37:23-38:8, 44:23-45:15).

254.

[REDACTED] Ex. 99

(Ahdout CFTC Tr. 240:2-241:12).

Ex. 169 (GLBR_00005534) (

[REDACTED] Ex. 92 (Dittami Tr. 283:3-14, 284:10-15) [REDACTED]

255.

[REDACTED] Ex. 92 (Dittami Tr. 300:20-301:3) [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 430:4-9) [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 430:10-15) [REDACTED]

[REDACTED]; Ex. 95 (Niv CFTC Tr. 419:6-14). [REDACTED]

[REDACTED] Ex. 170 (Wilson-Taylor Tr. 139:7-23). [REDACTED]

[REDACTED] Ex. 170 (Wilson-Taylor Tr. 140:19-24).

256. [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 331:20-332:22). [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 430:20-25) [REDACTED]

257. [REDACTED] Ex. 81 (Niv Tr. 160:10-22) [REDACTED]

[REDACTED] Ex. 96 (Dittami CFTC Tr. 432:9-14) [REDACTED]

258. [REDACTED]

[REDACTED] Ex. 99 (Ahdout CFTC Tr. 129:25-130:24).

259. [REDACTED] Ex. 81 (Niv Tr. 275:2-24).

260. [REDACTED]
[REDACTED] Ex. 81 (Niv Tr. 276:12-18). [REDACTED]
[REDACTED] *Id.*

Defendants Sought to Conceal FXCM's Relationship With Effex

261. [REDACTED]
[REDACTED] Ex. 171
(GLBR_00004281 at GLBR_00004281) [REDACTED]
[REDACTED].

262. [REDACTED]
[REDACTED]
[REDACTED] Ex. 172 (GLBR_00003881 at
GLBR_00003882). [REDACTED]
[REDACTED] *Id.*
(GLBR_00003881 at GLBR_00003881). [REDACTED]

[REDACTED] *See, e.g.*, ECF Nos.
252-1, 252-7, 252-8, and 252-9 (FXCM 10-Ks for 2011-2014); Exs. 82-90 (FXCM 10-Qs for
2012-2014).

263. [REDACTED]
[REDACTED] Ex. 173 (GLBR_00151710 at
GLBR_00151710).

264. [REDACTED]

[REDACTED]
[REDACTED] Ex. 174 (GLBR_00007684
at GLBR_00007686).

265. [REDACTED]

[REDACTED] Ex. 175 (GLBR_00029513 at GLBR_00029518). [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*
(GLBR_00029513 at GLBR_00029513).

266. [REDACTED]

[REDACTED]
[REDACTED] Ex. 176 (GLBR_00110437
at GLBR_00110437).

Regulators Investigate FXCM's Relationship With Effex

267. [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 166:5-167:7).

268. [REDACTED]

[REDACTED]. Ex. 81 (Niv Tr. 167:10-170:2); Ex. 177 (GLBR_00104025
at GLBR_00104026) [REDACTED]
[REDACTED]

269. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Ex. 178 (GLBR_00125304) (letter terminating services agreement);
ECF No. 252-27 (letter terminating Dittami's resignation letter).

270. [REDACTED]

[REDACTED] ECF No. 252-62. [REDACTED]
[REDACTED] Ex. 81 (Niv Tr. 262:12-14), [REDACTED]
[REDACTED] Ex. 179 (EY-GBI-WP-00004278 at
EY-GBI-WP-00004279) [REDACTED]
Ex. 81 (Niv Tr. 256:25-257:21).

271. [REDACTED], Ex.

81 (Niv Tr. 178:9-179:6), [REDACTED]
[REDACTED] ECF No. 252-38
(Acknowledgement and Confirmation).

272. [REDACTED]

[REDACTED] Ex. 81 (Niv Tr. 120:4-6); Ex. 92 (Dittami Tr.
200:19-24).

273. On February 6, 2017, the CFTC announced that it banned the Company from operating in the U.S. and fined the Company \$7 million after finding that FXCM was taking undisclosed positions opposite its retail customers. Ex. 180 (CFTC Press Release).

274. In its Order dated February 6, 2017 ("CFTC Order"), the CFTC found that "FXCM and FXCM Holdings, by and through their officers, employees, and agents, including

Respondents Niv and Ahdout, engaged in false and misleading solicitations of FXCM's retail foreign exchange ('forex') customers" by concealing that "FXCM had an undisclosed interest in the market maker that consistently 'won' the largest share of FXCM's trading volume - and thus was taking positions opposite FXCM's retail customers." ECF No. 245-7 at 2 (CFTC Order). [REDACTED]

[REDACTED] Ex. 181 (Defendants' responses to Plaintiffs' requests for admission) at 22.

275. The same day, the NFA issued a Complaint and a Decision against FXCM, Niv, Ahdout, and Niv's sister, Ornit Niv. ECF Nos. 245-5 (NFA Decision) and 245-6 (NFA Complaint). The NFA found that the defendants committed the violations alleged in the NFA's Complaint, ECF No. 245-5, including that FXCM directed customer trades to a liquidity provider, Effex, "that was purportedly independent but which FXCM actually supported and controlled. ECF No. 245-6 at 4-5.

276. The NFA found that in exchange for the order flow that FXCM directed to Effex, Effex paid rebates to FXCM that amounted at times to as much as 70% of Effex's profits from FXCM's order flow and which FXCM referred to internally as 'P&L'." ECF No. 245-6 at 5.

277. The Company also issued a press release on February 6, 2017, disclosing the settlements with the NFA and CFTC and announcing that the Company would withdraw from doing business in the U.S., pursuant to the CFTC's order, and sell its U.S. customer accounts. ECF No. 245-13 at 8.

278. On this news, the Company's share price fell \$3.40, over 68%, and the price of FXCM Notes fell over 42%. ECF No. 245-1 (Report of Plaintiffs' expert, Adam Werner) at 7.

279. On February 21, 2017, Niv resigned as CEO and from the FXCM board of directors. Ex. 182 (FXCM Form 8-K). That same day, FXCM announced its name change to Global Brokerage Inc. *Id.*

280. On December 11, 2017, the Company filed for Chapter 11 bankruptcy. Ex. 183 (Chapter 11 Petition).

Wilson-Taylor Report and Deposition Testimony

281. Defendants' witness, Simon Wilson-Taylor, submitted a report in connection with this action. ECF No. 252-2 (Wilson-Taylor Report). [REDACTED]
[REDACTED] *Id.* at 14 (Figure 1).

282. [REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 64:22-65:2).

283. [REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 77:22-78:2).

284. [REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 86:19-87:6).

285. [REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 104:2-7). [REDACTED] *id.*

[REDACTED] Ex.
170 (Wilson-Taylor Tr. 153:16-154:13).

286. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 121:7-122:15).

287. [REDACTED]
[REDACTED]
[REDACTED] Ex. 170 (Wilson-Taylor Tr. 124:8-14).

683 Capital Deposition Testimony

288. [REDACTED]
[REDACTED]
[REDACTED] Ex. 184 (Patt Tr. 33:20-25). [REDACTED]
[REDACTED] Ex. 184 (Patt Tr. 30:25, 103:20), [REDACTED]
[REDACTED] Ex. 184 (Patt Tr. 35:2, 126:16-19 [REDACTED]
[REDACTED] 129:19-20 [REDACTED]
[REDACTED], 139:9-10 [REDACTED] 148:4-7
[REDACTED]
[REDACTED]

289. [REDACTED]

[REDACTED] Ex. 184 (Patt Tr. 148:8-10).

290. [REDACTED]

[REDACTED] Ex. 184 (Patt Tr. 151:9-25) [REDACTED]

291. [REDACTED]

[REDACTED] Ex. 184 (Patt Tr. 152:2-10).

292. [REDACTED]

[REDACTED] Ex. 184
(Patt Tr. 77:23-78:7).

293. [REDACTED]

[REDACTED] Ex.
184 (Patt Tr. 142:16-22); [REDACTED]
[REDACTED] Ex. 184 (Patt Tr. 143:12-17); [REDACTED]
[REDACTED] Ex. 184 (Patt Tr. 144:13-14).

294. Patt provided a substantive and accurate explanation of the central claims in this case:



Ex. 184 (Patt Tr. 29:11-25).

Barron Expert Report and Supporting Deposition Testimony

295. Plaintiff's accounting expert, John Barron, submitted his expert reports in connection with this Action. ECF No. 240-1 (Barron Report) and 240-3 (Barron Rebuttal). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ECF No. 240-1 at 5.

296. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ECF No. 240-3 (Barron Rebuttal) at 20 (quoting Ex. 129 (EY-GBI-WP-00003862)).

297. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ECF No. 240-3 (Barron Rebuttal) at 26-

27 (quoting Ex. 129 (EY-GBI-WP-00003862)).

298. [REDACTED]

[REDACTED] Ex. 185 (Stollow Tr. 103:19-104:10, 107:6-107:15).

299. [REDACTED]

[REDACTED] Ex. 185 (Stollow Tr. 114:14-115:7). [REDACTED]

[REDACTED] Ex. 185 (Stollow Tr. 118:17-119:4).

300. [REDACTED]

[REDACTED] Ex. 186 (Lande Tr. 97:16–99:3).

[REDACTED] ECF No. 240-3 (Barron Rebuttal) at 35.

Defendants’ False and Misleading SOX Certifications

301. The 2011 10-K also contained Sarbanes-Oxley Act of 2002 (“SOX”) certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny

fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 2011 10-K SOX certification. Ex. 187 (2011 10-K SOX certification).

302. The 12Q1 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 12Q1 10-Q SOX certification. Ex. 188 (12Q1 10-Q SOX certification).

303. The 12Q2 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 12Q2 10-Q SOX certification. Ex. 189 (12Q2 10-Q SOX certification).

304. The 12Q3 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 12Q3 10-Q SOX certification. Ex. 190 (12Q3 10-Q SOX certification).

305. The 2012 10-K also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 2012 10-K SOX certification. Ex. 191 (2012 10-K SOX certification).

306. The 13Q1 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 13Q1 10-Q SOX certification. Ex. 192 (13Q1 10-Q SOX certification).

307. The 13Q2 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 13Q2 10-Q SOX certification. Ex. 193 (13Q2 10-Q SOX certification).

308. The 13Q3 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 13Q3 10-Q SOX certification. Ex. 194 (13Q3 10-Q SOX certification).

309. The 2013 10-K also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 2013 10-K SOX certification. Ex. 195 (2013 10-K SOX certification).

310. The 14Q1 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to

FXCM's auditor and audit committee. Niv signed his 14Q1 10-Q SOX certification. Ex. 196 (14Q1 10-Q SOX certification).

311. The 14Q2 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 14Q2 10-Q SOX certification. Ex. 197 (14Q2 10-Q SOX certification).

312. The 14Q3 10-Q also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 14Q3 10-Q SOX certification. Ex. 198 (14Q3 10-Q SOX certification).

313. The 2014 10-K also contained SOX certifications attesting to the accuracy of the report, certifying that “this report does not contain any untrue [or misleading] statement of a material fact,” and certifying that Niv disclosed “[a]ny fraud, whether or not material” to FXCM's auditor and audit committee. Niv signed his 2014 10-K SOX certification. Ex. 199 (2014 10-K SOX certification).

Dated: December 9, 2021

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Additional Counsel

CERTIFICATE OF SERVICE

I, the undersigned say:

I am not a party to the above case, and am over eighteen years old. On December 9, 2021, I served true and correct copies of the foregoing PLAINTIFFS' RULE 56.1 STATEMENT OF ADDITIONAL MATERIAL FACTS, by posting the document electronically to the ECF website of the United States District Court for the Southern District of New York, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 9, 2021, at Jenkintown, Pennsylvania.

/s/ Joshua Baker
Joshua Baker